

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, D.C. 20350-1000

SECNAVINST 5870.4
ONR 300
19 July 1985

SECNAV INSTRUCTION 5870.4

From: Secretary of the Navy
To: All Ships and Stations

Subj: COPYRIGHTED SOUND AND VIDEO
RECORDINGS

Ref: (a) SECNAVINST 5290.1 (NOTAL)

Encl: (1) DoD Directive 5535.4 of 31 Aug 84
(2) Sample format for requesting free permissions

1. Purpose. To implement enclosure (1) and provide policy, prescribe procedures and assign responsibilities for the use of copyrighted sound and video recordings within the Department of the Navy (DON).

2. Applicability

a. The provisions of this instruction apply to all Navy and Marine Corps activities and personnel, including all civilian officers and employees and all active duty military personnel of the Navy and Marine Corps and personnel of nonappropriated fund instrumentalities.

b. This instruction does not regulate the procurement or use of copyrighted works for authorized official purposes.

c. Reference (a) regulates the procurement and use of audiovisual productions and products for authorized official purposes.

3. Policy. The DON shall follow the policy prescribed in enclosure (1) and the procedures in paragraph 4 of this instruction.

4. Procedures

a. **Use of DON-owned audiovisual equipment.** DON appropriated or nonappropriated funded audio and video duplicating and playback equipment and facilities may not be used for reproduction of copyrighted sound or video recordings without permission of the copyright owner.

b. **Guidelines for determining whether a performance is "public".** United States copyright law, 17 U.S.C. 101, provides the following definition for determining whether

a performance is "public" for which permission from copyright owners is required:

"To perform or display a work 'publicly' means - -

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered"

(1) Within the DON displays or performances on board ship, in bachelor officer or bachelor enlisted quarters, day room, barracks, general mess, in an isolated area or deployed area are not considered "public" provided the performances or displays are made without any purpose of direct or indirect commercial advantage and without charge to the recipients.

(2) Within the DON displays or performances in open messes and clubs are considered "public" and will not be performed or displayed without the permission of the copyright owner, except as provided in paragraph 4f.

c. **Guidance for obtaining permissions or licenses from copyright owners for public performances or reproductions.** When a DON activity concludes that permission of a copyright owner may be required prior to use, the activity will request the permission directly from the copyright owner or agent. Copyright owners will often grant the DON permission to make limited use of copyrighted material without charge. Unless the requesting activity is aware that a free permission will not be granted, the initial request should ask for a free permission.

d. **Guidelines for permission requests.** Requests for free permissions should be constructed to permit an easy affirmative response using these guidelines.

(1) The following information should be included in the request, if applicable and available:

(a) Complete identification of the material for which permission to use is requested, including title of the work, name of author, exact copyright notice(s) appearing on the work and, when appropriate, editor and edition or program producer and program distributor.

(b) Designation of exact portion of the work to be used. Blanket permission to use excerpts "as later determined" will not be requested.

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(c) Statement of intended use(s) of the material including, when appropriate, number of copies or phonorecords to be made; type of reproduction (film, tape, or disc); intended distribution (including media format and recipients); whether material is to be sold and contemplated fees or charges in connection with use or distribution of the material; length of time material will be used; and dates, media format, and intended audience of the public performance or displays.

(d) Contemplated modifications of the work, if any.

(2) The request will be for no greater rights than are actually needed.

(3) The request will be submitted in duplicate so that the recipient may retain one copy and return the other granting the requested permission.

(4) The request will indicate that the copyright owner may designate the copyright notice and credit line to be used.

(5) A self-addressed return envelope will be enclosed.

(6) The request may be patterned after enclosure (2). If the requesting activity is aware, from prior experience or otherwise, that a request for a free permission would be futile, the initial request letter may ask for information concerning the fee required for the requested permission. Such a request should follow guidelines in subparagraphs 4d(1) and (2).

e. **Final action by requesting activities and purchase of permissions.** Upon receipt of the response of the copyright owner or agent, the requesting activity will review the response and determine whether the permission offered, if any, is of sufficient scope to cover the intended use and whether the use warrants the fee asked, if any. The requesting activity is authorized to purchase the permission offered if the fee is reasonable and the permission covers the intended use.

f. **Isolated areas or deployed units.** Within the DON, the Chief of Naval Operations and the Commandant of the Marine Corps determine which areas are isolated and which units are deployed based on the availability of adequate commercial video programming, whether by off-air or via a cable system. Where adequate commercial programming is available, requests for a determination as an isolated area or a deployed unit will not be approved.

g. **Copyright advice.** Questions as to whether a particular work is protected by copyright or whether a particular use would be infringement of copyright, as well as all other questions related to copyright, should be referred to Navy Patent Counsel, or the Director, Navy Patent Program/Patent Counsel for the Navy in the Office of Naval Research, 800 N. Quincy Street, Arlington, VA 22217-5000.

JAMES F. GOODRICH
Under Secretary of the Navy

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Department of Defense DIRECTIVE

SECNAVINST 5870.4
19 JUL 1985

August 31, 1984
NUMBER 5535.4

GC

SUBJECT: Copyrighted Sound and Video Recordings

A. PURPOSE

This Directive provides policy, prescribes procedures, and assigns responsibilities regarding the use of copyrighted sound and video recordings within the Department of Defense.

B. APPLICABILITY

1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

2. This Directive does not regulate the procurement or use of copyrighted works for authorized official purposes.

C. POLICY

1. It is DoD policy:

a. To recognize the rights of copyright owners by establishing specific guidelines for the use of copyrighted works by individuals within the DoD community, consistent with the Department's unique mission and worldwide commitments.

b. Not to condone, facilitate, or permit unlicensed public performance or unlawful reproduction for private or personal use of copyrighted sound or video recordings, using government appropriated- or nonappropriated-fund-owned or -leased equipment or facilities.

2. Although the policy expressed in this Directive takes into account the copyright law of the United States, the application of that law to specific situations is a matter for interpretation by the U.S. Copyright Office and the Department of Justice.

D. PROCEDURES

1. Permission or licenses from copyright owners shall be obtained for public performances of copyrighted sound and video recordings.

Enclosure (1)

2. Component procedures established pursuant to Section E., below provide guidance for determining whether a performance is "public." These general principles will be observed:

a. A performance in a residential facility or a physical extension thereof is not considered a public performance.

b. A performance in an isolated area or deployed unit is not considered a public performance.

c. Any performance at which admission is charged normally would be considered a public performance.

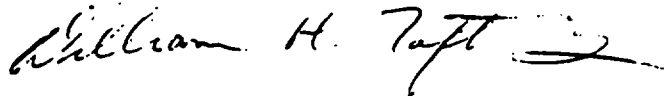
3. Government audio and video duplicating equipment and appropriated funded playback equipment may not be used for reproduction of copyrighted sound or video recordings.

E. RESPONSIBILITIES

Heads of DoD Components shall establish procedures to comply with this Directive and shall provide necessary local guidance and legal interpretation.

F. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Component implementation shall be submitted for the approval of the General Counsel, Department of Defense, within 90 days of the effective date of this Directive. All component implementing regulations and changes require the approval of the General Counsel.



William H. Taft, IV
Deputy Secretary of Defense

19 JUL 1985

SAMPLE FORMAT FOR REQUESTING FREE PERMISSIONS

(LETTERHEAD)

(Date)

(Name of copyright owner or agent)
(Address)

(Salutation)

(Name of activity) requests your permission as copyright owner or agent for the copyright owner to make the following use(s) for Department of Defense purposes of the identified material.

(Identification of material -- guideline 4d(1)(a))

(Portion of material to be used -- guideline 4d(1)(b))

(Intended use(s) -- guideline 4d(1)(c))

(Contemplated modifications -- guideline 4d(1)(d))

If the requested permission is granted, please sign below and return this original letter in the enclosed self-addressed envelope. A copy of this letter is included for your records.

(Complimentary close)

(Signature of requester)

(Title)

PERMISSION:

The above requested permission is granted, royalty-free. A notice of copyright and credit line is desired as follows:

(Leave at least 8 lines for credit line)

(Name of copyright owner
or authorized agent)

DATE: _____

BY _____

(Title)

Enclosure (2)